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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 RICHARD B. HOGUE,

8 Plaintiff(s),

9 v.

10 ALLIED COLLECTION SERVICE, INC.,
11 et al,

12 Defendant(s).

Case No. 2:16-CV-1620 JCM (VCF)

ORDER

13
14 Presently before the court is defendant Silver State School Credit Union's ("Silver State")
15 motion for attorney's fees. (ECF No. 71). Plaintiff Richard Hogue filed a response (ECF No. 77),
16 to which Silver State replied (ECF No. 80).

17 Also before the court is plaintiff's motion for attorney's fees. (ECF No. 76). Silver State
18 filed a response (ECF No 79), to which plaintiff replied (ECF No. 81).

19 **I. Facts**

20 This action arises from plaintiff's allegation that Silver State failed to properly investigate
21 a credit dispute of a report that included an auto loan discharged through bankruptcy. (ECF No.
22 1). Plaintiff alleged that Silver State's unreasonable investigation resulted in an erroneous report
23 of plaintiff's derogatory credit information to Experian in violation of the Fair Credit Reporting
24 Act, 15 U.S.C. § 1681 *et seq.* ("FCRA"). (ECF No. 1).

25 On February 7, 2018, after approximately 18 months of litigation, the court granted Silver
26 State's motion for summary judgment. (ECF No. 66). The court held that Silver State's
27 investigation in response to plaintiff's dispute was reasonable under FCRA and that plaintiff did
28

1 not incur damages. (*Id.*). On the same day, the court entered judgment in favor of Silver State.
2 (ECF No. 67).

3 On February 21, 2017, Silver State filed a motion for attorney's fees. (ECF No. 71). On
4 March 7, 2017, 28 days after the court entered judgment, plaintiff filed a countermotion for
5 attorney's fees. (ECF No. 79).

6 **II. Legal Standard**

7 Under the "American rule," litigants generally must pay their own attorney's fees in
8 absence of a rule, statute, or contract authorizing such an award. *See Alyeska Pipeline Co. v.*
9 *Wilderness Soc'y*, 421 U.S. 240, 247 (1975); *MRO Commc'ns, Inc. v. Am. Tel. & Tel. Co.*, 197 F.3d
10 1276, 1280–81 (9th Cir. 1999). Nonetheless, the decision to award attorney's fees is left to the
11 sound discretion of the district court. *Flamingo Realty, Inc. v. Midwest Dev., Inc.*, 879 P.2d 69,
12 73 (Nev. 1994).

13 Under Rule 54(d), a prevailing party seeking attorney's fees must meet the following four
14 requirements: (1) file the motion no later than 14 days after the entry of judgment; (2) specify the
15 judgment and the statute, rule, or other grounds entitling the movant to the award; (3) state the
16 amount sought or provide a fair estimate of it; and (4) disclose, if the court so orders, the terms of
17 any agreement about fees for the services for which the claim is made. Fed. R. Civ. P. 54(d)(2).

18 **III. Discussion**

19 *a. Silver State's motion for attorney's fees*

20 Silver State argues that it is entitled to attorney's fees on two grounds: (1) pursuant to
21 FRCA, and (2) under Federal Rule of Civil Procedure 68(d).

22 *i. FCRA*

23 The FCRA provides:

24 Upon a finding by the court that an unsuccessful pleading, motion, or other paper
25 filed in connection with an action under this section was filed in *bad faith or for*
26 *purposes of harassment*, the court shall award to the prevailing party attorney's fees
27 reasonable in relation to the work expended in responding to the pleading, motion,
or other paper.

28 15 U.S.C. § 1681n(c) (emphasis added). In the context of attorneys' fees, bad faith may be
established based on a showing that the plaintiff's action was unfounded from the outset, frivolous,

1 or brought for the purpose of harassment. See [*Christiansburg Garment Co. v. Equal Emp't*](#)
2 [*Opportunity Comm'n*, 434 U.S. 412, 421 \(1978\)](#).

3 Silver States primarily argues that plaintiff's claims were unfounded from the outset
4 because the credit report in dispute did not have any errors and plaintiff failed to provide evidence
5 that a third-party ever saw the report. (ECF No. 71). However, plaintiff's failure at summary
6 judgment was a result of unsuccessful discovery and unpersuasive legal arguments. These
7 shortcomings are not sufficient to establish bad faith.

8 *ii. Rule 68(d)*

9 [Federal Rule of Civil Procedure 68](#) allows a party to make an offer of judgment at least 14
10 days before the date set for trial. [Fed. R. Civ. P. 68\(a\)](#). "If the judgment that the offeree finally
11 obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred
12 after the offer was made." Fed. R. Civ. P. 68(d); see also [*Champion Produce, Inc. v. Ruby*](#)
13 [*Robinson Co.*, 342 F.3d 1016, 1026 \(9th Cir. 2003\)](#).

14 Plaintiff cites *MRO Communications*, which holds that "Rule 68 is inapplicable in a case
15 in which the defendant obtains judgment." *MRO Commc'n, Inv. v. American Tel. & Tel. Co.*, 197
16 F.3d 1276, 1280 (9th Cir. 1999) (citing *Delta Air Lines, Inc. v. August*, 450 U.S. 346, 352 (1981)).
17 Rather, when a defendant prevails "the trial judge retains his Rule 54(d) discretion." *Id.* (citation
18 omitted). Accordingly, because plaintiff did not act in bad faith, the court will deny Silver State's
19 motion for attorney's fees.

20 *b. Plaintiff's motion for attorney's fees*

21 Under Local Rule 54-14, a motion for attorney's fees "must be filed with the court and
22 served within 14 days of entry of the final judgment or other order disposing of the action." LR
23 54-14. Plaintiff filed his motion for attorney's fees 28 days after the court issued its order and
24 entered judgment. Accordingly, the court will deny plaintiff's motion for attorney's fees. See,
25 e.g., *Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir. 2010) (holding that district
26 courts have inherent power to control their own dockets); see also LR IC 7-1 ("The court may
27 strike documents that do not comply with these rules.").

28 . . .

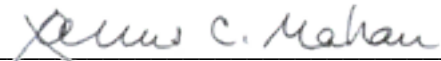
1 **IV. Conclusion**

2 Accordingly,

3 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Silver State's motion
4 for attorney's fees (EF No. 71) be, and the same hereby is, DENIED.

5 IT IS FURTHER ORDERED that the plaintiff's motion for attorney's fees (ECF No. 76)
6 be, and the same hereby is, DENIED.

7 DATED September 7, 2018.

8 
9 UNITED STATES DISTRICT JUDGE